



**U.S. Department of Justice
Federal Bureau of Prisons**

Central Office
320 First St., NW
Suite 936
Washington, DC 20534

September 30, 2019

Ms. Beryl Lipton
MuckRock News
DEPT MR 115962
PO Box 55819
Boston, MA 02205-05819

Request Number: 2015-02848

Sent via email to: 15962-81074768@requests.muckrock.com

Dear Ms. Lipton:

This is in response to the above referenced Freedom of Information Act (FOIA) request, in which you requested “all contracts (and their amendments) and memorandums of understanding entered into by the Bureau of Prisons for services and activities related to” the following: Val Verde Correctional Facility, Rivers Correctional Institution, Reeves County Detention Complex (R1, R2, & R3), Moshannon Valley Correctional Center, D. Ray James Correctional Facility, and Big Spring Correctional Center.

The United States Supreme Court recently held:

“At least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is ‘confidential’ within the meaning of Exemption 4.” *Food Marketing Institute v. Argus Leader Media*, No. 18-481, 2019 WL 2570624, 588 US __ (S.Ct. June 24, 2019)

The Court created a two part test to determine whether commercial or financial information is confidential.

“The term ‘confidential’ mean[s]... ‘private’ or ‘secret.’ ...information communicated to another remains confidential whenever it is customarily kept private, or at least closely held by the person imparting it....In another sense, information might be considered confidential only if the party receiving it provides some assurance that it will remain secret.” *Id.* (internal citations omitted)

The Bureau of Prisons (BOP) considers the records you seek to be confidential commercial or financial information. When BOP enters into a contract with a private entity, all non-confidential information related to the contract and solicitation is posted

on the internet. The Federal Acquisition Regulations promote and mandate a contracting system, which ensures competing private contractors are not provided access to their competitors' commercial or financial information. BOP understands its responsibility to protect private parties' commercial information and has a long history of only releasing information it is legally required to, such as the name of a contractor and the total price of a contract.

The Freedom of Information Act allows you to request any records not already required to be made available pursuant to 5 U.S.C. § 552(a)(1) or (a)(2). The records you request are already available to the public pursuant to the statute. BOP is not required to release the type of record you seek. See 5 U.S.C. § 552(a)(3). You may access the publicly available information concerning the contract at <https://www.fpds.gov>. Because any non-public records responsive to your request for information seek confidential commercial or financial information would be categorically exempt from disclosure, this Office is not required to conduct a search for the requested records. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, records were withheld in full from disclosure to you under exemption (b)(4). An explanation of FOIA exemptions is attached

This response is BOP's final response to your request, and we are closing your request. Please note without the consent of the appropriate third party contractor, all publicly available substantive information can be located at the link provided. If you still request the actual contract, please write back to let us know within 30 days of the date of this letter. We will then reopen your request, and place it back into the processing queue in the place where it would have been had this response not been sent. The substantive portions of the contracts BOP can release under FOIA will mirror the information publicly available. Please specify which portions of which contracts you request BOP process under FOIA and any other records you seek. Please note requesting "any and all" records related to a contract does not permit BOP to conduct a search for responsive records. We need more specificity describing the records.

If you have questions about this response please feel free to contact the undersigned, this office, or the Federal Bureau of Prisons' (BOP) FOIA Public Liaison, Mr. C. Darnell Stroble at 202-616-7750, 320 First Street NW, Suite 936, Washington DC 20534, or ogc_efoia@bop.gov.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information, Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States

Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20001, or you may submit an appeal through OIP's FOIAonline portal by creating an account at: <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink, appearing to read "E. Baime".

Eugene Baime
Supervisory Attorney

Explanation of FOIA Exemptions Used by the Federal Bureau of Prisons

5 U.S.C. § 552(b)(1) protects classified information.

5 U.S.C. § 552(b)(2) concerns matters related solely to internal agency personnel rules or practices.

5 U.S.C. § 552(b)(3) concerns matters specifically exempted from release by statute.

5 U.S.C. § 552(b)(4) concerns trade secrets and commercial or financial information obtained from a person that is privileged or confidential.

5 U.S.C. § 552(b)(5) concerns certain inter- and intra-agency communications protected by the deliberative process privilege, the attorney work-product privilege, and/or the attorney-client privilege.

5 U.S.C. § 552(b)(6) concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties.

5 U.S.C. § 552(b)(7)(A) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings.

5 U.S.C. § 552(b)(7)(B) concerns records or information compiled for law enforcement purposes the release of which would deprive a person of a right to a fair trial or an impartial adjudication.

5 U.S.C. § 552(b)(7)(C) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties.

5 U.S.C. § 552(b)(7)(D) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to disclose the identities of confidential sources and information furnished by such sources.

5 U.S.C. § 552(b)(7)(E) concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures for law enforcement investigations or prosecutions.

5 U.S.C. § 552(b)(7)(F) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.

5 U.S.C. § 552(b)(8) concerns matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

5 U.S.C. § 552(b)(9) concerns geological and geophysical information and data, including maps, concerning wells.